IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.565 OF 1999

Shri Ganesh @ Manya Vasant)
Marade, Aged about 21 yers,)
residing at Khardi, Taluka)
Shahapur, Dist. Thane) ..Appellant
(Accused No.1)

Vs.

The State of Maharashtra) ..Respondent

Mr.A.R.Pitale, Aedvocate for the Appellant.

Mr.D.P. Adsule, A.P.P. for the State.

CORAM: V.M.KANADE, J.
DATED: 25TH OCTOBER, 2004

ORAL JUDGMENT :

The Appellant is challenging the judgment and order passed by the III Additional Sessions Judge, Kalyan in Sessions Case No.189 of 1998. By the said judgment and order dated 16.9.1999 the Appellant and one other accused were convicted for having committed an offence punishable under section 392, 394 read with section 397 of the I.P.C. and, accused No.1 the Appellant therein was sentenced to suffer R.I. for 10 years and to pay the fine of Rs.5,000/- and, in default, to suffer R.I. for 2 years. Accused No.2 was convicted and sent to the

Borstal School at Kolhapur for 5 years. The Appeal has been preferred by Accused No.2.

2. The prosecution case is that the Complainant P.W.1 Ashok and one Shri Ramesh Chaudhari boarded a fast local train which was to go to Kasara. It was around 11.00 p.m. and there were only three persons in the compartment. While they wee sleeping, three unknown persons entered the compartment and they assaulted the complainant and compellted his friend Chaudhari to hand over Rs.1320/- to the assailants. When the train arrived at Khardi Station, the assailants escaped and Chaudhari and Ahire carried the injured complainant to the Station Master. A constable was called and the injured was taken to the Central Hospital, Ulhasnagar. A complaint was filed and an offence was registered under section 394 read with section 34 of the Indian Penal Code. The accused were thereafter arrested, recovery was made at the instance of the Accused No.1. The accused were identified by the complainant and his friend Chaudhari. The trial Court convicted the accused relying on the evidence of the complainant, P.W.1 and P.W.2 Ramesh Chaudhari.

3. P.W.1 Ashok Bhavsar has stated in his evidence

as to what took place as on 15.3.1998. He has stated that the accused assaulted him with the sword and snatched Rs.50/- from his pocket and Rs.1320/- from his friend Ramesh. The first blow was given on his neck and the second blow landed on his fingers. Then, he attempted. He has stated that he has seen the assailants and he identified Accused No.1 in the identification parade. He also identified the sword. Though, this evidence was cross-examined at length, his testimony has not been shaken. P.W.2 Ramesh Chaudhari has corroborated the statement of P.W.1. He has also identified the Appellant in the identification parade as well as in the Court. The accused also produced the sword.

4. Thus, in my view, the prosecution has proved beyond reasonable doubt that the Appellant had committed the said offence alongwith Accused No.2. The prosecution has also relied upon the report of the Chemical Analyst which discloses that blood group of the injured was "A" and the same blood was found on the sword and clothes of the accused. The conviction of the Appellant is therefore confirmed. However, so far as the sentence is concerned, the accused was 21 years of age when the said incident took place. The Appellant is in jail from the date

on which he was arrested and has already undergone morethan 6 years of sentence. In my view, this is a fit case for reduction of sentence of 10 years to 6 years.

5. The conviction therefore is confirmed. The sentence is altered to the one which the accused has already undergone. The Appellant to be released forthwith unless he is required in any other case. The Appeal is partly allowed in the above terms.